

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BEN GILES,

Plaintiff,

v.

JUSTIN PAUL THOMPSON, *et al.*,

Defendants.

Civil No. 08-cv-439-L(RBB)

**ORDER GRANTING IN PART *EX*
PARTE APPLICATION TO STAY
DISMISSAL [DOC. 96]**

On March 10, 2008, Plaintiff Ben Giles commenced this maritime personal-injury action against Defendants Justin Paul Thompson, Water Toys, Inc., Island Boat Rentals, and KDME, Inc. Plaintiff diligently prosecuted this action until November 2010.

On June 29, 2011, the Court issued a notice of hearing for dismissal under Civil Local Rule 41.1 for Plaintiff's failure prosecute this action for a period of more than 180 days. Prior to that hearing, Plaintiff made a request for entry of default against Mr. Thompson. Consequently, the Court granted Plaintiff a 30-day extension to pursue this action at the hearing. The hearing took place on July 18, 2011.

Following the July 2011 hearing, there again was no activity in this action for a period of more than 180 days. Moreover, Plaintiff failed to file a motion for default judgment following the Clerk's entry of default. As a result, the Court issued another notice of hearing for dismissal


1 under Civil Local Rules 41.1 and 55.1. The hearing took place on February 13, 2012. At the
 2 hearing, the Court dismissed this action without prejudice, but granted Plaintiff's counsel's
 3 request for a 30-day stay of the dismissal. Thereafter, Plaintiff's counsel sought an order from
 4 the Court to approve the substitution of counsel. The Court approved the substitution, and
 5 Plaintiff is now proceeding *pro se*.

6 Plaintiff now moves to extend the stay of dismissal another 120 days. He indicates that
 7 he is currently enrolled in a 6-month residential rehabilitation program, but wishes "the
 8 opportunity to prove up the judgment against Defendant, Justin Thompson." (Pl.'s Appl.
 9 1:20–2:2 [Doc. 96].) Plaintiff also states that he is currently in the "black-out" phase of his
 10 treatment. (*Id.* at 1:26–27.) Given that there has effectively been no activity in this action for
 11 *over a year*, Plaintiff's enrollment in the *6-month* residential rehabilitation program fails to
 12 explain his failure to prosecute this action. That said, the Court will exercise its discretion and
 13 grant Plaintiff some leeway.

14 In light of the foregoing, the Court **GRANTS IN PART** Plaintiff's *ex parte* application.
 15 (Doc. 96.) Plaintiff shall be given a **30-day extension** to the stay of dismissal. **However, no**
 16 **further extensions will be granted henceforth.**

17 **IT IS SO ORDERED.**

18
 19 DATED: March 7, 2012

20 
 21 M. James Lorenz
 United States District Court Judge

22 COPY TO:

23 HON. RUBEN B. BROOKS
 UNITED STATES MAGISTRATE JUDGE

24 ALL COUNSEL/PARTIES
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